IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 1594 OF 2003

Prakash Budhaji Jadhav. ... Petitioner.

V/s.

M/s. Bajaj Electricals Ltd. ... Respondent.

....

Mr. Vishwajit P. Sawant for the Petitioner.

Mr. P.M. Palshikar for the Respondent.

CORAM : DR. D.Y.CHANDRACHUD,J.

13TH DECEMBER, 2006.

P.C. :

1. This Petition is directed against an award of the Labour Court, dismissing a Reference under Section 10 of the Industrial Disputes Act, 1947.

2. The Petitioner worked with the Respondent as a Peon at the Reay Road Office between 17th July 1995 and 31st January 1998. From 17th July 1995, until 28th July 1995, the Petitioner was paid wages at the rate of Rs.40 per day. From May 1996 until May 1997 the wages were increased to Rs.60 per day. From June 1997, the Petitioner was paid salary at the rate of

Rs.2,000/- per month. According to the Petitioner, there was a vast disparity in the wages and other conditions of service that were allowed to him as compared to other Peons who were permanently engaged. The latter, according to the Petitioner, received a salary of about Rs.5,000/- per month together with allowances and leave. In the month of January 1998, the Petitioner made a grievance to the Senior Administrative Officer who assured the Petitioner that his grievance would be looked into. However, on 31st January 1998, the Petitioner was told not to report for work with effect from Monday, 2nd February 1998. By a letter dated 3rd September 1998, the Petitioner claimed re-instatement. The demand of the Petitioner was taken into Conciliation and upon a failure report, a reference to adjudication was made.

3. The Respondent filed a written statement. Evidence was adduced on behalf of the workman and the management. The Labour Court by its award dated 2nd August 2002 dismissed the Reference. The primary finding of the Labour Court is that the Petitioner had not worked continuously for 240 days. This finding has been arrived at by the Labour Court on a perusal

of the vouchers. The evidence on the record showed that the name of the Petitioner was not borne on the Muster Roll or Wage Register and payments were made to him on vouchers. The case of the management was that the Petitioner was being called upon to work whenever work was available, on a temporary basis. The Labour Court held that as soon as a temporary vacancy came to an end, the work for which the Petitioner was appointed was concluded and there was no question of the workman being terminated. The Labour Court was of the view that the management has also proved that the workman had stopped reporting for duty from June 1998 and there was accordingly an abandonment of service by the Petitioner.

4. On behalf of the Petitioner it has been submitted that :

(i) The finding that the Petitioner had not completed 240 days of work in the preceding 12 months prior to the termination is ex-facie erroneous;

(ii) The vouchers which were admitted by the witness for the management clearly show that during the period

1st February 1997 till 31st March 1998, the Petitioner had in fact, worked for a period in excess of 240 days (325 days to be precise);

(iii)The termination of the services of the Petitioner was unlawful in the absence of compliance of Section 25(F) of the Industrial Disputes Act, 1947;

(iv) The evidence would show that it was the management which directed the Petitioner to stop reporting and the finding that there was abandonment was ex-facie perverse;

(v) That even in the case of an alleged abandonment of service, as a principle of law, the management must atleast offer an opportunity to the workman to tender his explanation. In the present case no such inference could be drawn and not even an opportunity was granted to the workman.

5. On behalf of the Respondent however, it has been submitted that even assuming that the workman had completed 240 days in the preceding calendar year prior to the termination, the evidence of the

management witness would sustain the abandonment of service. In the alternative it was submitted that neither has a case for the grant of re-instatement been made out nor for the regularization of service.

6. In the course of the cross examination of the witness who deposed on behalf of the management, it has emerged that the Petitioner was being paid salary on the basis of vouchers. The contention of the management was that when a regular Peon was deputed for assisting in audit work, there was a temporary vacancy which was filled up by engaging the Petitioner. The witness for the management admitted in the course of his cross examination that all the 30 vouchers produced by the workman alongwith a list, Exhibit V-4 pertain to the Petitioner for the payments made to him. The witness stated that the originals were with the Company. The witness has also admitted that the management has not written any letter to the Petitioner for his alleged absence. The name of the Petitioner, it was admitted, was not borne either on the Muster Roll or in the Wage Register since payments have been made on vouchers.

7. Counsel appearing on behalf of the management has fairly not disputed authenticity of the copies of vouchers since the witness of the management also candidly admitted to the correctness of the vouchers that were produced on behalf of the workman. The vouchers are on the record of these proceedings.

8. In the course of the hearing of the Petition, the exercise of finding out the actual number of days that the Petitioner had worked between February 1997 and January 1998 has been carried out with the assistance of Counsel. The vouchers would show that between February 1997 and April 1997, the Petitioner had put in 49 days of work. For May 1997 the Petitioner was paid a consolidated amount of Rs.1800/- for 30 days of work. Thereafter, from June 1997 until the end of January 1998, the Petitioner was paid a consolidated salary of Rs.2,000/- per month. Hence, between May 1997 and January 1998, payment was not made for the actual number of days worked, but on the basis of a consolidated salary for the entire month. This period between May 1997 and January 1998 is of nine months. In **Workmen of American Express International Banking Corporation v/s. Management of American Express**

International Banking Corporation (AIR 1986 S.C. 458), the Supreme Court held that the expression "actually worked under the employer" in Section 25(B) of the Industrial Disputes Act, 1947 would not refer only to the number of days that the workman had actually worked with 'hammer, sickle and pen', but would comprehend the total number of days for which the workman was actually engaged and was paid. In the present case, the vouchers which have been produced on the record clearly establish that in the preceding 12 calendar months, prior to the date of termination, the workman had worked for a period in excess of 240 days. The finding of the Labour Court is, therefore, manifestly contradictory to the evidence on record and will have to be interfered with in the exercise of the jurisdiction under Article 226.

9. The termination of service by the employer and the dispensing with the services of the workman was contrary to law since it is an admitted position that there was no compliance with Section 25((F) of the Industrial Disputes Act, 1947. The contention of the management that there was an abandonment of service is not supported by any evidence on record. The case of

the management that the workman stopped reporting for work was belied by the evidence of the witness for the management who stated that in February 1998, the workman had contacted him, at which point of time he was informed that there was no vacancy and that he should report some time in September 1998. In September 1998 when the workman contacted the Administrative Officer, he was informed that there was no vacancy available. The evidence of the workman which remained unshaken in the course of cross examination is also to the effect that at the end of January 1998, he was directed not to report for work from 1st February 1998. Prior thereto, the workman was engaged on a monthly salary of Rs.2,000/- since June 1997. The procedure required to be followed under the law for dispensing with the services of the workman was not followed and no retrenchment compensation was offered.

10. The question that arises before the Court is in regard to the relief that can be appropriately granted. In the present case the workman was admittedly engaged on a temporary basis. The witness who deposed on behalf of the management stated that

the workman was engaged when a vacancy arose as a result of the fact that the regular Peon was deputed to handle the files relating to audit work. In recent decisions, the Supreme Court has emphasised that a breach of the provisions of Section 25(F) would not entitle the workman to an order of regularization. This was enunciated in the Judgment in **M.P. State Agro Industries Development Corporation V/s. S.C. Pandey** (2006) 2 Supreme Court Cases 716, where the Supreme Court observed thus :-

> " It is also a well-settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularised in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in Dhampur Sugar Mills Ltd. v/s. Bhola Singh ((2005) 2 SCC 470) apart from Mahendra L. Jain ((2005) 1 SCC 639)."

11. Having regard to the circumstances of the case, including the length of time for which the worker has been engaged, the interests of justice would be served if an order is passed directing the Respondent to pay to the Petitioner compensation in lieu of re-instatement. The last drawn salary of the worker was Rs.2,000/- per month. This amount which

the worker had drawn was substantially below what was paid to the other workmen. Considering the interests of justice the Respondent is directed to pay to the Petitioner an amount of Rs.1.00 lac as and by way of compensation in lieu of re-instatement. The Award of the Industrial Court shall stand set aside and the reference shall stand disposed of in terms of the aforesaid directions. Payment as aforesaid shall be made within a period of three weeks from today. The Petitioner would be entitled to such spread over as is otherwise admissible for the purposes of Income Tax. Rule is made absolute in the above terms. There shall be no order as to costs.